

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.3288 OF 2006
IN
SUIT NO.2000 OF 2006

Rizvi Land Developments Pvt.Ltd. Plaintiff
V/s.
Housing Development and
Improvement India Pvt.Ltd. Defendant

Mr.G.S. Hegde i/b Mr.R.R. Kalekar for the Plaintiff.

Mr.T.N. Subramaniam with Mr.R.C. Shah i/b Mr.J.B.
Patel for the Defendant.

CORAM : S.J. VAZIFDAR, J.
DATED : 11TH OCTOBER, 2007.

P.C. :

1. The Plaintiff seeks the setting aside of the order dated 14.9.2006 passed by me which reads as under :-

"After the matter was heard for some time, the learned counsel appearing on behalf of the Plaintiffs sought to withdraw the suit unconditionally. He states that he wishes to approach the authorities under the Slum Rehabilitation Act.

Suit is allowed to be withdrawn

unconditionally.

Refund as per rules."

2. The present Notice of Motion was taken out on 3.10.2006. It is contended that the advocate never had any authority to withdraw the suit. In this Notice of Motion the Plaintiff has also sought interim reliefs on the merits of the matter. In another Notice of Motion being Notice of Motion No.2254 of 2006 certain other interim reliefs were also sought.

3. An ad-interim application was made in the present Notice of Motion which was rejected by me by an order dated 3.10.2006 on the ground that the suit had already been withdrawn unconditionally.

4. Against the order dated 3.10.2006, the Plaintiff filed an Appeal. The Appeal was disposed of by a Division Bench of Their Lordships R.M. Lodha and J.H. Bhatia, JJ. by an order dated 10.11.2006. Before the Division Bench, two affidavits were filed by two of the three advocates, who had appeared in the matter when the order dated 14.9.2006 was passed.

5. The said affidavits were not filed when the

ad-interim application was made before me. They both state that they did not instruct the counsel to withdraw the said suit. They presumed that the counsel had instructions directly from the Plaintiff to do so and therefore, did not prevent him from withdrawing the suit. The Division Bench dismissed the Appeal.

6. The Plaintiff thereafter filed Review Petition No.34 of 2006. The same was disposed of by the Division Bench of Their Lordships J.N. Patel and J.H. Bhatia, JJ. by an order dated 18.6.2007. The observations in the order regarding the conduct of the advocates were expunged. The status-quo order passed by the Division Bench was not continued. The Notice of Motion was directed to be heard on merits.

7. I am informed that the learned Division Bench hearing the Review Application directed the counsel who withdrew the suit to file an affidavit. Pursuant thereto, the learned counsel filed an affidavit dated 14.6.2007. It is true as was contended on behalf of the Defendants that the affidavit proceeds on an unfortunate basis. The learned counsel records what allegedly transpired in the Court. He states that though reluctant to do so, he withdrew the suit due to

persistent suggestion of the Court to do so. The statements in this regard are unfortunate and do not warrant any consideration. From the affidavit, it appears that the learned counsel's contention is that he had no instructions from the Plaintiff to withdraw the suit. I will presume that the learned counsel's statement that he had no instructions to withdraw the suit are correct despite the unfortunate nature of his affidavit. It is necessary to do so only to meet the ends of justice, to ensure that the Plaintiff does not suffer as a result of a wrong decision on his part to withdraw the suit. No prejudice will be caused to the Defendants in the facts and circumstances of this case if the matter is heard.

8. In the circumstances, the Notice of Motion is made absolute in terms of prayer (b). Liberty to the Plaintiff to take out a fresh Notice of Motion for interim reliefs on merits. Mr.Hegde, the learned counsel appearing on behalf of the Plaintiffs states that sufficient notice shall be given to the Defendants before making any ad-interim application.